4014

SUPREME COURT OF THE UNITED STATES.

No. 121.

JOHN H. HOWARD, PLAINTIFF IN ERROR,

vs.

STEPHEN M. INGERSOLL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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[GIDEON, Print.]

Writ.

THE STATE OF ALABAMA, *ss:*

To any sheriff of the State of Alabama, greeting:

You are hereby commanded, without delay, to take John H. Howard, Josephus Echols, Farish Carter, and Jonathan Bridges, if in your county to be found, and them safely keep, so that you have their bodies before the honorable the judge of the circuit court, at a court to be holden for Russell county, on the sixth Monday after the third Monday in March, A. D. 1848, then and there to answer Stephen M. Ingersoll in a plea of trespass on the case, &c., to the damage of the said Ingersoll thirty thousand dollars; and have you then and there this writ, with your endorsement thereon.

Witness John L. Calhoun, clerk of our said court, at office, this 31st day of January, in the year of our Lord 1848, and of American independence the seventy-second year.

JOHN L. CALHOUN, *Clerk.*

When issued.

Issued 31st day of January, 1848.

Cause of action.

This action is instituted to recover damages from the defendants for their having wrongfully placed in the river Chattahoochee a great quantity of earth, timber, [and] rubbish, and thereby obstructed the passage of the waters of said river, and forced the same to flow back upon the lands of plaintiff, and also upon his saw-mill and machinery, and thus destroyed the same, and made the same useless to the plaintiff, and other wrongs, &c.

HOOPER, *Plff's att'y.*

When received.

Received in office March 2d, 1848.

THEOPHILUS WHITE, *Sheriff,*
By WM. J. WRIGHT, *Deputy sheriff.*

When executed.

Executed the within on John H. Howard, March 3d, 1848.

THEOPHILUS WHITE, *Sheriff,*
By WM. J. WRIGHT, *Deputy sheriff.*

The other defendants not to be found in the county of Russell, March 3d, 1848.

THEOPHILUS WHITE, *Sheriff*,
By WM. J. WRIGHT, *Deputy sheriff*.

THE STATE OF ALABAMA,
Russell county.

Circuit court, spring term, 1848.

Stephen M. Ingersoll, by attorney, complains of John H. Howard, in custody, &c., in a plea of trespass on the case; whereupon the plaintiff declares and says, that on the first day of January, anno domini one thousand eight hundred and forty-four, he was and ever since he has been, lawfully seized of a certain tract of land containing about six hundred acres, and known and described as fractional section number eleven, (11) in township number seventeen, (17) and range number (30,) and a certain water-mill thereon standing, with the appurtenances; and the plaintiff before and on the said last mentioned day, and ever since, has been entitled to the free use and course of a certain stream of water flowing through the said land to carry the said mill; but the defendant, well knowing the premises, and contriving to deprive the plaintiff of the use of the said land, and of the said stream of water, and of the profits of the said mill, on or about the said last mentioned day, and at divers times between that day and the commencement of this action, at a place below the said land and water-mill, placed a great quantity of earth, and lumber and stones, and rubbish and timber, and other obstructions in the said stream of water, so as to obstruct the running of the said stream in its natural course, and to cause it to flow back upon the said land, and upon the water-wheel and machinery of the said mill, whereby he prevented the movement and working of the said mill for divers days and times between the last mentioned day and the commencement of this suit, and deprived the plaintiff of the use and profit of the said mill, to the damage of the plaintiff thirty thousand dollars.

Stephen M. Ingersoll, by attorney, complains of John H. Howard, in custody, &c., in a plea of trespass on the case, &c., whereupon the plaintiff declares and says, that on the first day of January, anno domini 1843, he was, and ever since he has been lawfully seized and possessed of certain tracts of land, situate in the county of Russell, and in the State of Alabama, and known and described as follows, to wit, fractional section number eleven, in township number seventeen, and range number thirty; and also of certain other tracts known as lots numbered one, two, three, and four, in plan of the town of Girard, in Russell county aforesaid, and that he then was, and ever since has been, entitled to the free use and enjoyment of the said tracts of land; but the defendant, well knowing the premises, and contriving to deprive the plaintiff of the use, enjoyment, and profits of the said tracts of land, on or about the first day of January, anno domini 1843, at a certain place in

the river Chattahoochee below the said tracts of land of the said plaintiff, placed a great quantity of timber, stones, lumber, iron, and other materials in the said river, so as to obstruct the running of the said river in its natural course, and to cause it to flow back on the said tracts of land of the plaintiff, and to overflow them, whereby he prevented the plaintiff from using the said tracts of land, and whereby he has deprived the plaintiff of the use, enjoyment, and profits of the said tracts of land, to the damage of the plaintiff thirty thousand dollars.

And the plaintiff further declares and says, that on the first day of January, anno domini 1843, he was lawfully possessed of a certain other tract of land, situated in the said county of Russell, known as fractional number eleven, in township number seventeen, and range number thirty, and a certain water mill thereon standing, with the appurtenances, which said water mill was worked by the waters of the river Chattahoochee; but the defendant well knowing the premises, and contriving to deprive the plaintiff of the use, enjoyment, and profits of the said tract of land and of the said water mill, on the first day of February, anno domini 1843, and on divers times between that day and the commencement of this action, at a certain place in the river Chattahoochee, below the said tract of land, placed a great quantity of timber, stones, lumber, iron, and other materials in the said river Chattahoochee, *below the said tract of land placed a great quantity of timber, iron, and other materials in the said river Chattahoochee*, and thereby obstructed the running of the said stream of water, the river Chattahoochee, in its natural course, and caused the waters of the said river to flow back on, and to overflow, the said land of the plaintiff, and the water wheel and machinery of the plaintiff's said mill, whereby he deprived the said plaintiff of the use, enjoyment, and profits of the said tract of land and of the said water mill.

And the plaintiff further declares and says, that on the 1st day of January, anno domini 1843, he was lawfully possessed of a certain other water mill and dam, for working the same, and the appurtenances thereof, situate in the river Chattahoochee, and within the limits of the State of Georgia, at, to wit, in the county aforesaid, and the plaintiff had the right to the free use and enjoyment of the waters of the Chattahoochee to carry the said mill; but the defendant, well knowing the premises, and contriving to deprive the plaintiff of the use of the said water mill and dam, on the said last mentioned day, and at divers times between that day and the commencement of this action, at a place below the said water mill and dam, and in the said river Chattahoochee, and within the limits of the State of Georgia, at, to wit, in the county aforesaid, placed a great quantity of timber, stones, lumber, iron, and other materials in the said river, thereby obstructed the running of the said river in its natural course, and caused the waters of the said river to flow back on, and to overflow, the water wheel and machinery of said mill of said plaintiff, whereby he deprived the plaintiff of the use, enjoyment, and profits of his said water

mill and dam. All which is to the damage of the plaintiff thirty thousand dollars.

HOOPER, BELSER, & JOHNSON,
Plaintiff's attorneys.

Filed in office March 26th, 1849.
JOHN L. CALHOUN, *Clerk.*

Plea.

Defendant pleads, 1st, not guilty; 2d, statute of limitations of six years.

S. HEYDENFELDT.

Issue joined in short by consent.
HOOPER, BELSER & JOHNSON.

Preamble of court.

THE STATE OF ALABAMA,
Russell county.

Be it remembered, that, at a circuit court, began and held at the court-house in said county and State, on the 26th day of March, it being the fourth Monday in March, in the year of our Lord 1849, and of American independence the seventy-third year, the said circuit court met pursuant to adjournment; present presiding, his honor John J. Woodward.

Judgment.

STEPHEN M. INGERSOLL
vs.
JOHN H. HOWARD.

Came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit, Thomas S. Tate, foreman, and eleven others, who being duly elected, tried, and sworn, well and truly to try the issue joined between the parties, upon their oaths do say: "We, the jury, find for the plaintiff, and assess his damages at four thousand dollars, the damages in the declaration mentioned." It is therefore considered by the court that the said plaintiff do recover of the said defendant the sum of four thousand dollars, the damages by the jury aforesaid assessed, together with the costs in this behalf laid out and expended, for which let an execution issue.

STEPHEN M. INGERSOLL
vs.
JOHN H. HOWARD.

In Russell circuit court, spring term, 1849.

On the trial of this cause, the plaintiff produced a patent from the

United States to himself, dated in 1842, to fractional section No. 11, township 7, range 30, and proved title in himself to lots 1, 2, 3 and 4, in the town of Girard, lying in Russell county, Alabama, and specifically described in *in* some of the counts of the declaration; said land has for its eastern boundary the State of Georgia, and is immediately west of the Chattahoochee river, on the bank thereof. This river has for the most part high bluff banks; but in some places the banks are low, and the adjacent lands on either side (where they are low) are subject to inundation, for nearly a mile out of the banks. Immediately at the plaintiff's lands and lots there are banks of the river from fifteen to twenty feet high, and very abrupt, and are high on both sides, and above and below, for considerable distances. The abrupt and high banks, however, do not extend down to the water's edge at ordinary low water. The bed of the river at this point is about two hundred yards wide from bank to bank; and by the bed is meant the space between these abrupt and high banks, and is composed of rocks and slues among the rocks from one side to the other; ordinary low water and extreme low water together prevail for about two-thirds of the year, during which time the river is confined to a channel about thirty yards wide, leaving the bed of the river as above described, exposed on each side of this channel, from thirty to sixty yards. Immediately under the western abrupt and high bank, and within the latitude of the north and south boundary line of plaintiff's land, said lines being drawn down to the water's edge, and in the bed of the river, as above described, east of said western abrupt and high bank, the plaintiff erected a mill previous to 1842, and continued the possession and use thereof until overflowed by defendant's dam. The place on which said mill was situated was covered with water in ordinary high water, but was bare and dry in ordinary low water.

To supply his mill with water the plaintiff had erected a wing dam, which ran in a northeast direction into the river, and supplied his mill with water at all seasons, and diverted a portion of the stream to the said mill, which passed again into the river above defendant's dam, and he, plaintiff, had blown out rock to give room to his mill wheel.

It was further proved, that, in 1845 the defendant erected a dam across the river, about three hundred yards below the plaintiff's mill, and opposite the city of Columbus, Georgia. The said dam was four to five feet high, and at ordinary low water backed the water on plaintiff's mill so as to prevent its working; in high water the said dam made no difference, as the water was level above it and on both sides of it. The plaintiff further proved the value of his mill and the injury he sustained. The defendant introduced in evidence the act of cession of the State of Georgia to the United States; the constitution of the State of Georgia; an act of the State of Georgia granting to the city of Columbus, in the right to lay off lots on her river boundary, running across the Chattahoochee river, to high water mark, on the western bank of said river. All of which evidence, being printed in

public acts, are to be read and considered in full as part of this bill of exceptions.

The defendant also offered in evidence an authenticated deed to him, from the city of Columbus, granting him said lots, running across the river, and authority to erect the dam across the river; which original deed and accompanying plot, it is agreed, may form a part of this bill of exceptions, and may be exhibited as such. The plaintiff's land was situated at a point of the river where there were falls or rapids, and where it was not navigable, and that it was far above tide water, and a fresh water stream, and between Miller's bend and Cochei creek. The defendant's dam raised the water to a point on the western high bank which [is] dry at ordinary low water. One witness proved that he never knew a sheriff or constable of Georgia to come over on the western bank to serve any writ, or process, or other official act, and stated that he, the witness, had good opportunity to know if any such thing had been attempted, as he had lived on the western bank for ten years.

At the place at which plaintiff's mill was erected the summit of the bank was never overflowed, even at the highest stages of the river, the water of which always remained several feet below it. The plaintiff gave in evidence to the court, which was not allowed to go as evidence to the jury, although requested by plaintiff, acts of the State of Georgia, conveying authority to the commissioners to negotiate the cession of territory from Georgia to the United States, and also the act of Georgia ratifying said cession; all of which may be read from the public acts. The court charged the jury, that one passing from Georgia to Alabama, across the Chattahoochee river, at ordinary low water, would be upon the bank as soon as he left the water on the western side, although an inappreciable distance from the water, and that the line described in the treaty of cession from Georgia to the United States, as running up said river, and along the western bank thereof, is the line impressed upon the land by ordinary low water; and if they believed the plaintiff's mill was west of that line, and defendant's dam backed the water so as to obstruct the operation of said mill, the plaintiff was entitled to recover; to which charge the defendant excepted.

The defendant asked the court to charge the jury, that if the bank of the river was ordinary low water mark, the plaintiff had no right to the use of the water at that stage; which charge the court refused; to which defendant excepted, and prays his exceptions to be signed and sealed, and made part of the record of this cause, which is accordingly done in term time.

J. J. WOODWARD. [L. S.]

Execution.

THE STATE OF ALABAMA,
Russell county.

To any sheriff of the State of Alabama, greeting:

You are hereby commanded, that of the goods, and chattels, and

tenements, of John H. Howard, you cause to be made the sum of four thousand dollars, which Stephen M. Ingersoll lately, on the 26th day of March, A. D. 1849, in the circuit court of Russell county, hath recovered against him for his damages which he had sustained, as well by the non-performance of certain promises and assumption by the said defendant to the said plaintiff lately made, as also the sum of fifty-one $\frac{88}{100}$ dollars, as for costs in and about his said suit in that behalf expended, whereof the said defendant is convicted, as appears to us of record; and that you have the said moneys at our next circuit court for said county, to be holden on the third Monday after the first Monday in September next, to render to the said plaintiff for his damages and costs aforesaid; and have then and there this writ, with your endorsement thereon.

Witness Milton J. Latham, clerk of the said court, at office, this 21st day of June, A. D. 1849, and of American independence the seventy-third year.

MILTON J. LATHAM, *Clerk*

When issued.

Issued the 21st day of June, 1849.

When received.

Received in office June 30th, 1849.

B. WILLIAMS, *Sheriff*.

Entries on fi. fa.

Notice received from Milton S. Latham, clerk of the circuit court of Russell county, to stay all further proceedings as to the collection of this fi. fa., as defendant has sued out a writ of error, and has given the necessary bond required by law.

B. WILLIAMS,
Sheriff of Barbour county, Alab.

August 15th, 1849.

THE STATE OF ALABAMA,
Russell county.

Know all men by these presents, that we, John H. Howard and Van Leonard, are held and firmly bound unto Stephen M. Ingersoll, in the penal sum of eight thousand dollars.

Sealed with our seals, and dated the 20th day of July, A. D. 1849.

The condition of the above obligation is such, that whereas the said Stephen M. Ingersoll did recover judgment against the said John H. Howard, for the sum of four thousand dollars, at the spring term, 1849, of the circuit court of Russell county; and whereas the said John H. Howard has this day sued out a writ of error in said cause, returnable to the January term, 1850, of the supreme court of the State of Alabama; now, if the said John H. Howard shall well and truly pay what-

soever judgment, damages, and costs, which may be rendered against him by the said supreme court, then the above obligation to be void, else to remain in full force.

JOHN H. HOWARD, [L. S.]
VAN LEONARD. [L. S.]

The State of Alabama, to the clerk of the circuit court of Russell county.

Because of the record and proceedings, and also in giving judgment in a suit in our circuit court for Russell county, at the spring term thereof, A. D. 1849, between Stephen M. Ingersoll, plaintiff, and John H. Howard, defendant, as it is said, manifest error hath intervened, to the great damage of the said John H. Howard, as by his complaint we are informed; we are willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid; and therefore, in this behalf, do command you, that if judgment be therefor given, that you send to us, fully and distinctly, under your seal, the record and proceedings, with all things concerning the same, with this writ, so that we may have them at the next term of our superior court, to be holden in and for said State of Alabama, on the first Monday in January next, that the record and proceedings aforesaid being inspected, we may cause further to be done thereupon, for correcting that error, what of right, according to the laws of the State, ought to be done.

Witness Milton S. Latham, clerk of our said court, at office, this day of , A. D. one thousand eight hundred and forty-nine, and of American independence the seventy-fourth year.

MILTON S. LATHAM, *Clerk.*

Issued day of , 1849.

THE STATE OF ALABAMA,
Russell county.

I, Thomas H. Burch, clerk of the circuit court of the county and State aforesaid, do certify, that the three sheets of paper hereunto annexed, do contain a true copy of the proceedings had in a certain cause, wherein Stephen M. Ingersoll was plaintiff, and John H. Howard was defendant, as appears by the record of the same remaining in the said office.

Given under my hand, and seal of office, this fifth day of February, A. D. 1850, and of American independence the seventy-fourth year. [L. S.]

THOMAS H. BURCH, *Clerk.*

HOWARD vs. INGERSOLL. } Supreme court, January, 1850.

The matter of the bill of exceptions is assigned for error by the plaintiff.

CAMPBELL, *For plaintiff.*

And afterwards, to wit, on Tuesday, June 11th, 1850, the following judgment was rendered and entered by the supreme court of the State of Alabama, to wit:

JOHN H. HOWARD
vs. } 2765.
S. M. INGERSOLL.

This day came the said parties, by their attorneys, and thereupon the record in this cause, and the matters of error assigned therein, being argued and examined, it seems to the court that, in the record and proceedings of the circuit court of Russell county there is no error; it is therefore considered that the judgment of the said circuit court be affirmed, and that the defendant in error recover of the plaintiff in error, and of Van Leonard, the security on the writ of error bond, the amount of the judgment of the said circuit court, ten per cent. damages thereon, the interest on the said judgment, besides the costs of this court and of the said circuit court.

THE UNITED STATES OF AMERICA:

The President of the United States, to the supreme court of the State of Alabama.

Whereas, in the record and proceedings, as well as in the giving of judgment in a certain cause lately pending in said supreme court, in which John H. Howard is plaintiff, and Stephen M. Ingersoll is defendant, manifest error hath intervened, to the great damage of the plaintiff, as it is said. Now, we being willing, if any error there hath been, that the same should be corrected, do command you, that you cause to be sent openly, under the seal of the said court, to the Supreme Court of the United States, to be holden at Washington city, at the regular term thereof next to be holden according to law, in December next, the record and proceedings, as well as the judgment in the said cause, in order that, if error there be, the same may be corrected; and herein fail not.

Witness honorable Edmund S. Dargan, chief justice of the supreme court of Alabama, first Monday of December, 1849, and of American independence the 74th year.

Issued 24th June, 1850.

THE UNITED STATES OF AMERICA.

The President of the United States, to the marshal of the middle district of the State of Alabama, greeting:

Whereas, a writ of error hath been sued out by the plaintiff in a certain cause lately pending in the supreme court of the State of Alabama, wherein John H. Howard is plaintiff, and S. M. Ingersoll is defendant; which writ is returnable to the next term of the Supreme Court of the United States, to be holden at the Capitol, in Washington city, in December next, according to the statute. Now, we command

you to cite the said defendant, S. M. Ingersoll, or his attorneys, James E. Belsor and Nathan Harris, to be and appear at the said Supreme Court, to hear errors assigned in the said cause, and to do and receive whatever the said Supreme Court may order in this behalf. Hereof fail not.

Witness hon. Edmund S. Dargan, chief justice of the supreme court of Alabama, this 22d June, A. D. 1850, and of American independence the 74th year.

E. S. DARGAN, *C. J.*

Deed.

Mayor and council of the city of Columbus, to John H. Howard and Josephus Echols.

GEORGIA, *Muscogee county.*

Duly recorded in the clerk's office of superior court, on book B, pages 325, 326, and 327, this 14th day of April, 1842.

WM. T. BURDIN, *Clerk.*

CITY OF COLUMBUS, *Muscogee county, Georgia.*

This indenture, made and entered into this day of December, in the year of our Lord 1841, between the mayor and council of the city of Columbus, (now in session,) of the one part, and John H. Howard and Josephus Echols, of the city aforesaid, of the other party, witnesseth: That for and in consideration of the sum of one hundred dollars, to them in hand paid by the said John H. Howard and Josephus Echols, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and for and in consideration of the performance, on the part of the said John H. Howard and Josephus Echols, of the considerations hereinafter named, and for and in consideration of their bond, made to said mayor and council of the city of Columbus, bearing date thirteenth day of June, in the year aforesaid, requiring under a penalty the performance of said considerations; they, the said mayor and council of the city of Columbus, have bargained, and sold, aliened, granted, and conveyed, and by these presents do bargain, sell, alien, grant, and convey, to the said John H. Howard and Josephus Echols, their heirs, executors, administrators, and assigns, all of those lots of land, of even numbers, situate, and lying, and being in said city of Columbus aforesaid, each being seventy-two feet wide, north and south, more or less, and extending and running east and west from Bay street, as defined in the plat and plan of survey above and herein written, to high water mark on the western bank of the Chattahoochee river, and between Franklin and Crawford streets, and known, and distinguished, and designated in the plan, plot, and survey aforesaid, as number two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, and thirty-six; to have and to hold the said bargain-

ed lots of even numbers, together with all and singular the rights, members, privileges, and appurtenances thereunto in any wise belonging, to them, the said John H. Howard and Joseph Echols, their heirs, executors, administrators, and assigns, and to their own proper use, benefit, and behoof forever, in fee simple, subject to the following conditions: The said John H. Howard and Joseph Echols shall erect a suitable, sufficient, and well constructed dam across the Chattahoochee river, terminating in the eastern bank thereof, at any point on or above lot No. one, in the aforesaid plan, plot, and surveys designated, and below the north common lots, so that when said river is at its usual heights, five feet head of water may be obtained on said lot No. one, and an increased head on each of the lots below it, for the purpose of propelling machinery, by an almost level canal or race; and to construct and form a safe and well constructed canal or race extending from said dam through all of said lots; said dam to be so high, and said canal or race so capacious, that when said river falls to the lowest height at which it usually stands in very dry weather, all the water of said river may, as it runs down, pass through said canal or race, and keep said dam and race forever in good repair; the said lots of even numbers and their improvements (and no other property whatever) to be forever liable for the payment of any damage which said city, or any person or persons, or company of persons, to whom they may sell or convey any one or more of said lots, of odd numbers, may sustain by reason of a failure to complete said race or canal, or to keep the same and dam in good repair; and to commence in good faith and not evasively the erection of said dam, and the construction of said race or canal within twelve months from the twenty-ninth day of June, in the year aforesaid, and to have said dam completed and said canal or race so far completed, that said five feet head of water may [be] obtained on said lot number one, and available for propelling machinery within twenty-seven months from this date hereof, and to fully complete said canal or race within five years from the day and year last aforesaid; and in the event of a failure to erect said dam and said race within the time limited, said lots of even numbers shall revert to said mayor and council.

In testimony whereof, the said mayor and council of the city of Columbus have affixed their common seal and signatures, in open session.

JOHN M. LEWIS,
Mayor.
JOHN BETHANE,
JOSEPH STURGIS,
J. D. HOWILL,
J. L. MORTON,
JOHN QUIN,
P. A. CLAYTON,
S. G. NILES,
W. S. HALSTEAD,
THOS. BERRY,

A. J. ABBOTT,
THOS. MORIS,
Aldermen.

Test:

JAMES SHAW.

Signed and sealed as aforesaid, and delivered in presence of witnesses.

R. M. C. ROBINSON,
HUGH MCDONALD.

GEORGIA, *Muscogee county.*

Before me, Augustus J. Abbott, a justice of the peace in and for said county, personally came N. M. C. Robinson, who, being duly sworn, deposeth and saith, that he was present and saw the aldermen composing the council of the city of Columbus, whose names are annexed to the within deed, sign the same, annexing the common seal of the mayor and council of the city of Columbus to said deed, and delivered the same as signed and sealed for the purposes therein expressed; and that at the same time, to wit, the twenty-second day of December, in the year 1841, he, deponent, signed said deed as a subscribing witness, and that at the same time he saw Hugh McDonald sign it also as a subscribing witness; that all this was done in open session in the council chamber in said city.

N. M. C. ROBINSON.

Sworn to and subscribed before me this 14th day of February, 1842.

AUGUSTUS J. ABBOTT, *J. P.*

GEORGIA, *Muscogee county.*

Before me, George W. Tarintine, justice of the peace in and for said county, personally came James Shaw, who, being duly sworn, deposeth and saith, that in December, in the year 1841, in the chamber of the mayor and council of the city of Columbus, in said city, he seen the said mayor, John L. Lewis, acting as mayor, sign the within deed, and deliver the same as mayor as aforesaid, sealed with the common seal of the said mayor and council for the purposes therein expressed; that, at the same time and place, he, deponent, signed said deed as a subscribing witness, and said John Bethune, whose name appears signed also as a subscribing witness.

JAMES SHAW.

Sworn to and subscribed before me this 12th day of February, 1842.

GEO. W. TARINTINE.

STATE OF GEORGIA,
Muscogee county, city of Columbus.

I, William A. Douglass, clerk of the mayor and council of the city

of Columbus, (aforesaid,) do hereby certify, that the within deed was executed, signed, and sealed with the common seal of said mayor and council of the city of Columbus, by them, on the twenty-second day of December, in the year 1841, and then and there delivered; that the seal hereunto annexed is the common seal of said mayor and council; and that the same was done in open session, in the chamber aforesaid.

In witness whereof I again hereunto annex the seal of said mayor and council, of the city of Columbus, this twenty-seventh day of December, 1841.

W. A. DOUGLASS, [SEAL.]
Clerk.

An act to incorporate the Columbus Water Lot Company in the city of Columbus, to be called "The Water Lot Company of the city of Columbus.

In senate: Read 1st time, November 10th, 1845. Read 2d time, November 14th, 1845. Read 3d time, December 13th, 1845, and passed.

THOS. R. R. COBB,
Secretary of Senate.

In the House of Representatives: Read 1st time, December 18th, 1845. Read 2d time, December 22d, 1845. Read 3d time, December 24th, 1845, and passed.

Test:

JOHN J. WORD,
Clerk House of Representatives.

An act to incorporate the Columbus Water Lot Company, in the city of Columbus, to be called "The Water Lot Company of the city of Columbus.

Whereas, by an act of the legislature of the State of Georgia, assented to on the twenty-second day of December, 1840, the mayor and council of the city of Columbus were authorized to define Bay street in said city, and to limit its width and to lay off water lots up and along the western boundary of said street, and to dispose of said water lots, by sale or lease, for such times and on such terms as they might deem best for the interest of said city, and to execute titles to the same. And whereas, in compliance with said act, the said mayor and council have sold to John H. Howard and others the water lots before mentioned, lying between Franklin and Crawford streets in said city, and extending from said Bay street to high water mark on the western bank of the Chattahoochee river, requiring of them to make certain improvements, to wit, building a dam, canal, and other works, which are now nearly all completed according to the contracts made between the parties, by means of which a large amount of water power has been, and will be, commanded for manufacturing purposes. Now, in order to

enable the said Howard and his associates, owners of said water lots, to conduct their affairs, and to carry on their operations with greater facility:

Section 1st. "Be it enacted by the senate and house of representatives of the State of Georgia, in general assembly met, That from and after the passage of this act the said company, to wit, John H. Howard, Farish Carter, John B. Baird, William L. Jake, and their associates, and their successors, shall be, and they are hereby, constituted a corporation and body politic, by the name and style of the Water Lot Company of the city of Columbus, and by that name shall be, and are hereby, made able and capable in law, to have, hold, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of whatsoever kind, nature, or quality the same may be; and the same to sell, grant, demise, alien, or dispose of; and to sue and be sued, plead and be impleaded, answer and be answered, in any of the courts of civil jurisdiction in this State, or any other place whatsoever; and also to make, use, and have a common seal, and the same to break, alter, and renew at pleasure, and also to ordain, establish, and put in execution such by-laws, rules, and regulations as may seem necessary for the government of said corporation; provided, that such by-laws, rules, and regulations be not contrary to the constitution and laws of this State or of the United States; and generally to do and execute all and singular such acts, matters, and things as to them may or shall appertain; subject, nevertheless, to the restrictions, limitations, and provisions herein prescribed.

"Section 2d. And be it further enacted by the authority aforesaid, that the parties in interest in said water lots shall constitute a board of directors, who shall have power to elect annually, and whenever a vacancy may occur, a president from their number, to elect whom a majority of the whole number of votes shall be necessary; the said board shall also have power to elect a secretary in the same manner, whose duty it shall be to record the proceedings of the president and directors. The seal of the corporation shall be attached to every conveyance relating to real estate, and which conveyance shall also have the signature of two-thirds of the directors, including that of the president; and the death of one or more of the directors or parties in interest shall at no time or in any case prevent, or hinder, or delay a sale or sales of the said lots, or any of them, or any interest therein by the survivors in the name of the corporation; but nothing herein contained shall bar the right of an executor or administrator of a deceased party from becoming a director.

"Section 3d. And be it further enacted by the authority aforesaid, that the president shall make all such contracts, not appertaining to real estate or an interest therein, as he shall be authorized by the board to make; provided, that such authority of the board shall have been reduced to writing and recorded by the secretary.

"Section 4th. And be it further enacted by the authority aforesaid, that no obligation whatever, requiring the payment of money or other thing, shall be binding upon said corporation; provided, the same bear

not the seal of the corporation and the signatures of two-thirds of the directors, including the president.

"Section 5th. And be it further enacted, that the stockholders shall be liable in their private capacities in proportion to the amount of stock owned by them; and the company shall not be indebted, at any one time, for a greater amount than one-half of their capital stock.

"Section 6th. And be it further enacted, that all laws and parts of laws contrary to this act are hereby repealed.

CHAS. J. JENKINS,
Speaker of the House.
ABSALOM H. CHAPPELL,
President of the Senate.

Approved December 27th, 1845.
GEO. W. CRAWFORD, *Governor.*

SECRETARY OF STATE'S OFFICE, GEORGIA,
Milledgeville, 8th January, 1850.

I hereby, certify that the above foregoing is a true copy from the original act in this office; given under my hand and seal of office.

GEO. W. HARRISON,
Secretary of State.

An act to authorize the mayor and council of the city of Columbus to define the limits of Bay street in said city, and to lay off a portion of said street and of the north common of said city into water lots, and to dispose of the same.

In the House of Representatives: Read 1st time, 4th Dec'r, 1840. Read 2d time, 9th Dec'r, 1840. Read 3d time, 10th Dec'r, 1840.
Attest: ELBRIDGE G. CABARRISS, *Cl'k.*

In Senate: Read 1st time, 12th Dec'r, 1840. Read 2d time, 15th Dec'r, 1840. Read 3d time, 21st Dec'r, 1840, and passed.
Attest: DAVID J. BAILEY, *Sec'ry.*

An act to authorize the mayor and council of the city of Columbus to define the limits of Bay street, in said city, and to lay off a portion of said street and the north common of said city into water lots, and to dispose of the same.

Section 1st. Be it enacted by the senate and house of representatives of the State of Georgia, in general assembly met, and it is hereby enacted by the authority of the same, that, from and after the passage of this act, the mayor and counsel of the city of Columbus may, and they are hereby authorized to define Bay street, in said city, and to limit its width to 100 feet, and to lay off water lots up and along the western boundary line of said street, and on the north common of said city, beginning at the south common, and extending north to the northern limits of the north common of said city, and next to high water mark on

the western bank of the Chattahoochee river. And be it further enacted, that the mayor and council of the city of Columbus may, and they are hereby, authorized to dispose of said water lots, by sale or lease, for such time and on such terms as they may deem best for the interest of said city, and to execute titles to the same.

Section 2d. Be it enacted by the authority aforesaid, that all laws and parts of laws militating against this act be and the same are hereby repealed.

CHARLES J. JENKINS,
Speaker of the House of Representatives.
THOMAS STOKES,
President of the Senate.

Assented to 22d December, 1840.

CHARLES J. McDONALD,
Governor.

SECRETARY OF STATE'S OFFICE, GEORGIA,
Milledgeville, 8th January, 1850.

I certify that the above is a true copy from the original act in this office; given under my hand and seal of office.

GEO. W. HARRISON,
Secretary of State.

Bond.

Know all men by these presents, that we, John H. Howard, Jno. Gill Shorter, Eli T. Shorter, and Cullin Battle, are held and firmly bound, unto Stephen M. Ingersoll, in the sum of ten thousand dollars; for the payment of which, well and truly to be made to the said Stephen M. Ingersoll, his executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, by these presents. Given under our hands and seals, this 24th day of June, 1850.

The condition of the above obligation is such, that whereas, at the June term, 1850, of the supreme court of the State of Alabama, and on the eleventh day of said month, the above named Stephen M. Ingersoll obtained a judgment and decree of the said court against one John H. Howard; and whereas, also, the said John H. Howard has complained that manifest damage hath been done to him, the said Howard; and whereas, also, he, the said Howard, hath applied for and obtained from the chief justice of the said supreme court of Alabama a writ of error, returnable to the next term of the Supreme Court of the United States, to be held at the city of Washington, on the day of

Now, therefore, we, the above named John H. Howard, John Gill Shorter, Eli T. Shorter, and Cullum Battle, shall duly prosecute the said writ of error, and fully pay the judgment of the said supreme court of Alabama ten per cent. damages thereon, the interest on the said judgment from the time of its rendition, and all costs of the circuit

court of Russell county, and also of the said Supreme Court, then this obligation be null and void, otherwise to remain in full force and effect.

Given under our hands and seals.

JOHN H. HOWARD, [SEAL.]
JNO. GILL SHORTER, [SEAL.]
ELI S. SHORTER, [SEAL.]
CULLIN BATTLE. [SEAL.]

STATE OF ALABAMA, *to wit:*

I, George C. Ball, clerk of the supreme court of the State of Alabama, do hereby certify, that the foregoing transcript, from page 1 to page 19, inclusive, is a full and correct copy of the record and proceedings in the case of John H. Howard, plaintiff, and S. M. Ingersoll, defendant, now on file in my office, and also of the judgment of the supreme court of the State of Alabama, in the said cause, affirming the judgment of the circuit court of Russell county, on the 11th June, 1850, in said cause.

Given at office this 18th day of November, A. D. 1850, and of American independence the seventy-fifth year. Witness my [SEAL.] hand and seal of office.

GEORGE C. BALL,
Cl'k supreme court of Alabama.